

IN THE MATTER OF:	*
MARIA LUCIA TELLEZ	*
	*
Petitioner	*
Maria L. Tellez	*
For the Petitioner	*
*****	*
Unray Peters,	*
Department of Housing and	*
Community Affairs	*
*****	*
Nidia Tellez	*
Support for Petition	*
*****	*

HEARING EXAMINER'S REPORT AND RECOMMENDATION

I. STATEMENT OF THE CASE	2
II. FACTUAL BACKGROUND	3
A. The Subject Property	3
B. The Surrounding Neighborhood	5
C. The Master Plan	6
D. The Proposed Use	7
E. Traffic Impacts	10
F. Environmental Impacts	11
G. Community Response	11
III. SUMMARY OF THE HEARING	11
A. Petitioner's Case	12
B. Public Agency Testimony	13
IV. FINDINGS AND CONCLUSIONS	13
A. Standard for Evaluation	14
B. General Standards	16
C. Specific Standards	22
D. Additional Applicable Standards	28
V. RECOMMENDATION	28

I. STATEMENT OF THE CASE

In Petition No. S-2832, Maria Lucia Tellez seeks approval of a Special Exception under Zoning Ordinance §59-G-2.00 to allow an accessory apartment on property located at 202 Hannes Street, Silver Spring, Maryland, on land in the R-60 (Residential, One-family, Detached) Zone. The legal description of the property is Lot 15, Block J, Section 3, in the Northwood Park View Subdivision. The tax account number is 01367470.

On February 17, 2012, the Board issued a notice of a public hearing before the Hearing Examiner for May 10, 2012. Exhibit 11(b). Technical Staff of the Maryland-National Capital Park and Planning Commission (M-NCPPC), in a report¹ dated April 25, 2012 (Exhibit 12), recommended approval of the special exception, with four (4) conditions.

Unray Peters, Housing Code Inspector for the Department of Housing and Community Affairs (DHCA), inspected the property on May 4, 2012, and reported a number of items in a memorandum dated May 8, 2012 (Exhibit 13). The inspector noted that the accessory apartment provides 537 square feet of habitable space and concluded that occupancy must be limited to no more than two (2) unrelated persons or a family not to exceed four (4) persons.

The hearing went forward as scheduled on May 10, 2012, and Petitioner appeared *pro se*. Nidia Tellez (“Ms. Tellez”), Petitioner’s daughter, and prospective tenant of the accessory apartment, testified in support of the petition and identified photographs and other exhibits in the record. Petitioner adopted the findings in the Technical Staff Report (Exhibit 12) and in the Housing Code Inspector’s Report (Exhibit 13) as her own evidence and agreed to meet all the conditions set forth in both reports. Unray Peters, Housing Code Inspector for DHCA, also testified. No opposition appeared at the hearing.

¹ The Technical Staff report is frequently quoted and paraphrased herein.

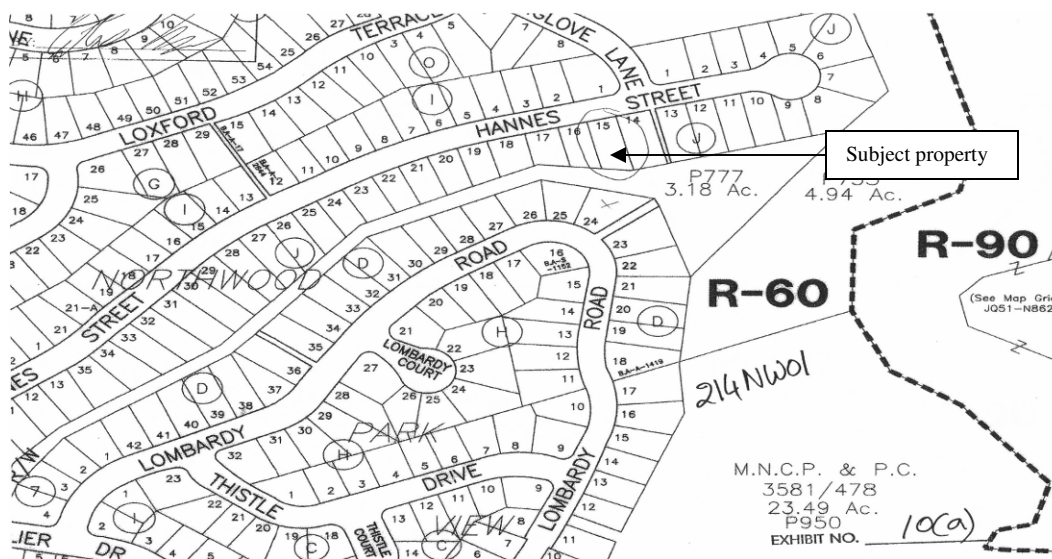
Petitioner executed an affidavit of posting (Exhibit 14). Petitioner did not produce a copy of her deed at the hearing. The Hearing Examiner accepted a copy of the tax records for the property from the Maryland Department of Assessments and Taxation (“SDAT”) (Exhibit 15). Tr.13. The record was held open until May 18, 2012, to give time to the Court Reporter to produce the hearing transcript. The record closed as scheduled on May 18, 2012, with no further documents other than the transcript being received.

For the reasons set forth below, the Hearing Examiner recommends approval of the requested special exception, subject to the conditions set forth in Section V of this Report.

II. FACTUAL BACKGROUND

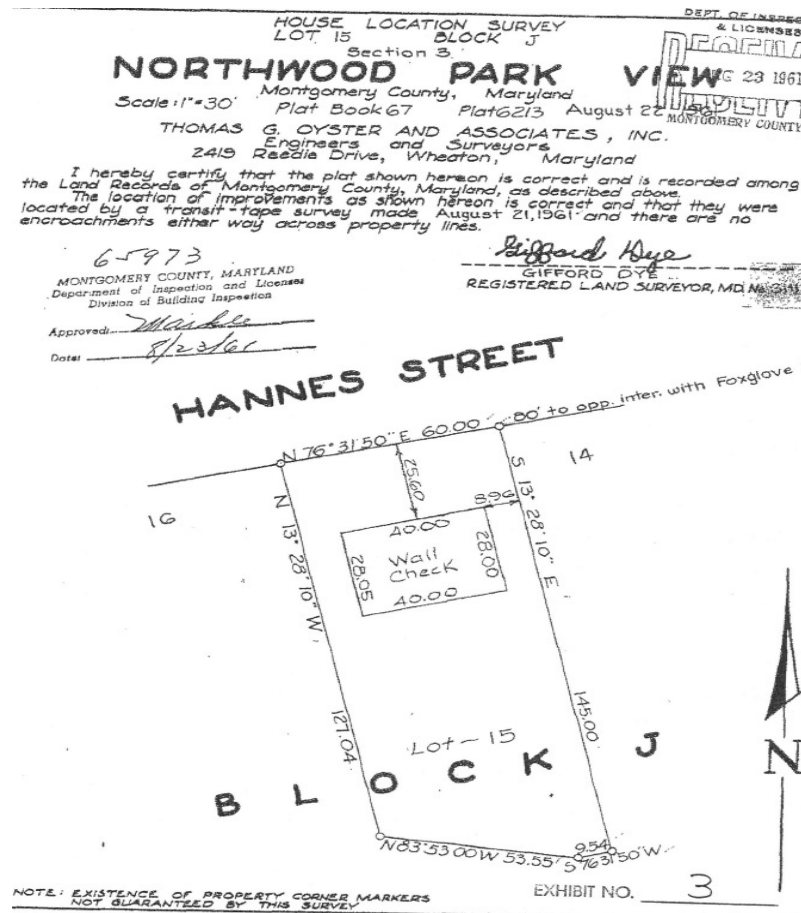
A. The Subject Property and Its Current Use

The subject property is located at 202 Hannes Street, Silver Spring, Maryland. The property is an interior lot located on the south side of Hannes Street near the intersection of Hannes Street and Foxglove Lane, as shown below on the Zoning Map, Exhibit 10 (a):



Montgomery County Zoning Map

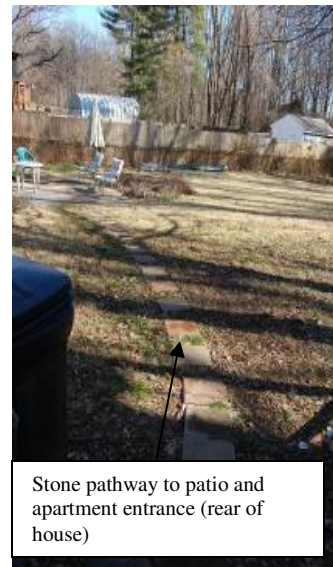
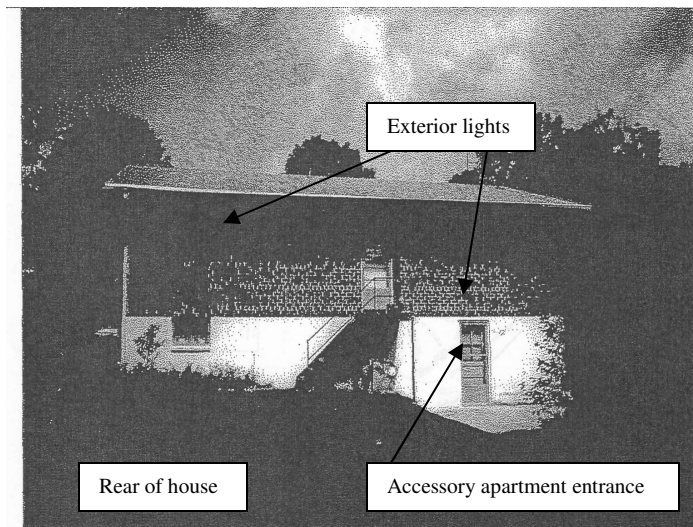
Petitioner's single-family home is located on an 8,247 square-foot lot as shown on the Site Plan below (Exhibit 3).



Technical Staff described the property as follows (Exhibit 12, p. 2):

The existing one story house was constructed in 1962 and has 1,120 square feet above ground with a 1,114-square foot basement. The house is located on gently sloping land, decreasing in elevation toward the rear of the property. The backyard is mostly clear and fenced on three sides. Existing landscaping is well maintained. The site has its sole access point from Hannes Street. There is ample space for parking on the street.

Photographs of the property, provided by Technical Staff (color photos) (Exhibit 12, p.3) and Petitioner (black and white photo) (Exhibit 9), are shown on the next page.



B. The Surrounding Neighborhood

Technical Staff defined the neighborhood by the following boundaries which are accepted by the Hearing Examiner: Loxford Terrace to the north, Northwest Branch Trail to the east, Lombardy Road to the south, and Cavalier Drive to the west.

The neighborhood boundary, depicted with a solid line on the aerial map shown below (Exhibit 12, p. 4), has been drawn by Technical Staff to include any nearby property that may be affected by a potential increase in density or traffic:



Technical staff advises that the neighborhood consists of 73 single-family detached dwellings in the R-60 Zone and there are no other special exception uses within the neighborhood. Exhibit 12, pp. 4 and 8. The Hearing Examiner concurs with Technical Staff's conclusion that the "proposed apartment will not increase the intensity or scope of special exception uses. . . . [and] will not alter the predominately residential nature of the area." Exhibit 12, p. 8.

C. The Master Plan

The subject property lies within the *Kemp Mill Master Plan*, approved and adopted in 2001. Exhibit 8. Technical Staff advises that there are no Master Plan recommendations

relevant to this site. However, Technical Staff noted that the Plan “contains recommendations that emphasize the unique character of the neighborhoods and encourage using innovative approaches and regulatory processes to create and maintain attractive and safe communities.” Exhibit 12, p. 5. Technical Staff found the proposed special exception use to be consistent with the Master Plan “since it does not propose any changes to the appearance of the existing single-family detached house.” *Id.*

The Hearing Examiner agrees with Technical Staff because the Plan supports R-60 zoning in which accessory apartments are a special exception use. In addition, this accessory apartment is not visible from the street and therefore doesn’t change the existing structure’s appearance as a single-family dwelling consistent with the surrounding neighborhood. Since the exterior of Petitioner’s home will not be changed, it will retain the residential appearance and compatibility sought by the Master Plan. The Hearing Examiner finds that the proposed use is consistent with the *Kemp Mill Master Plan*.

D. The Proposed Use

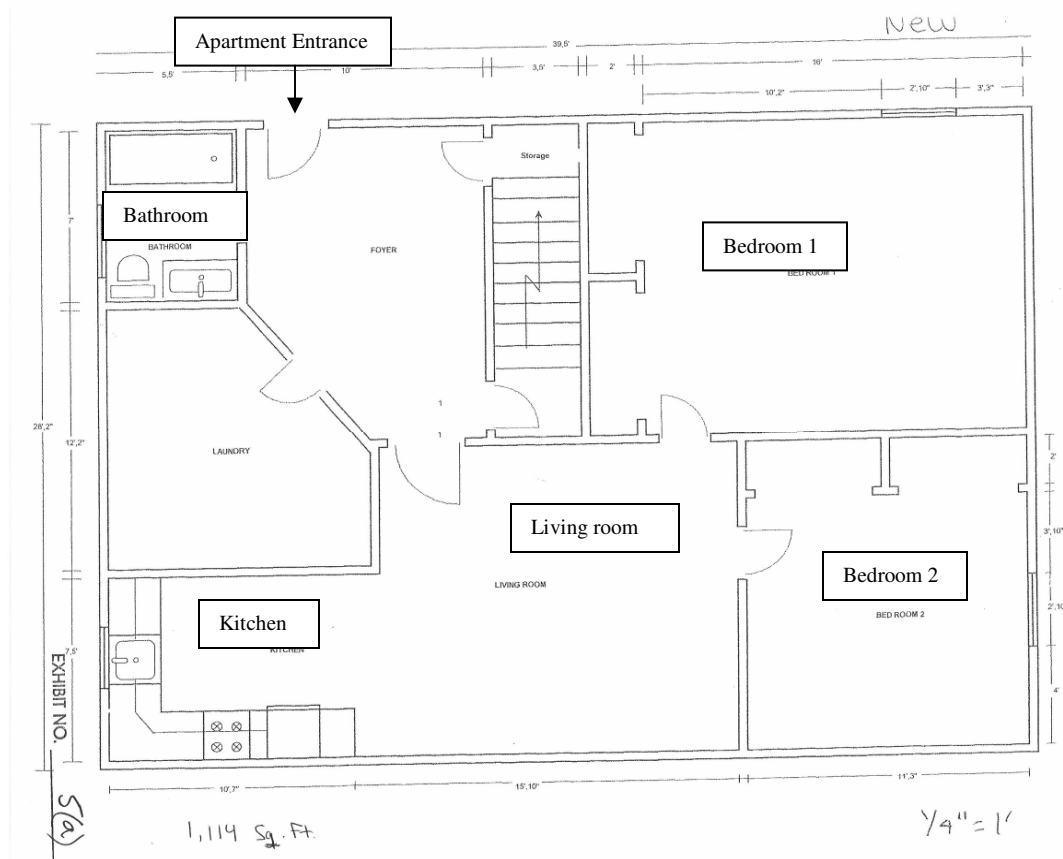
Petitioner is requesting approval of an existing² accessory apartment located in the basement of her one-story detached home. Technical Staff advises that the apartment occupies 1,114 square feet out of approximately 2,234 square feet of floor area (main dwelling 1,120 square feet). Petitioner occupies the main dwelling and her daughter will occupy the accessory apartment. Tr. 5-7. The apartment is a separate living unit with its own exterior separate entrance in the rear of the home, previously shown in a photograph on page 5 of this report, which Staff described as follows (Exhibit 12, p. 4):

[T]he accessory apartment entrance is clearly distinct from the entrance to the main dwelling and has the appearance of a typical rear entry into a single-family home. The accessory apartment entrance should not detract

² Petitioner indicated on her Petition that the apartment was created on July 1, 2011. Exhibit 1.

from the appearance of the neighborhood. Adequate lighting of residential character is located above the entrance to the accessory apartment and along a stone pathway that leads from the driveway to the apartment entrance.

The Floor Plan of the accessory apartment (Exhibit 5(a)) is shown below:



DHCA inspected the property on May 4, 2012. Housing Code Inspector Unray Peters reported his findings in a memorandum dated May 8, 2012 (Exhibit 13), as follows:

The preliminary inspection was conducted on May 4, 2012. The Accessory Apartment is located in the cellar of the house. The issues regarding Accessory Apartment standards are as follows:

1. The living room wall near the electrical outlet needs to be painted.
2. The tires located in side yard need to be removed from property.
3. The exterior landscaping needs to be maintained with regards to cutting grass throughout property.

Mr. Peters found that the total habitable area of the accessory apartment is approximately 537 square feet. Based on that fact, he concluded that it may be occupied by no more than two (2) unrelated persons or a family not to exceed four (4) persons. He also noted in his report and that “[t]he windows in both bedrooms measure at 30 x 36 and 42 inches from the bottom of sill to floor.” Exhibit 13. Mr. Peters confirmed the driveway (measuring 180 square feet) allows for one off-street parking space and noted there was additional parking in front of the home on both sides of Hannes Street.

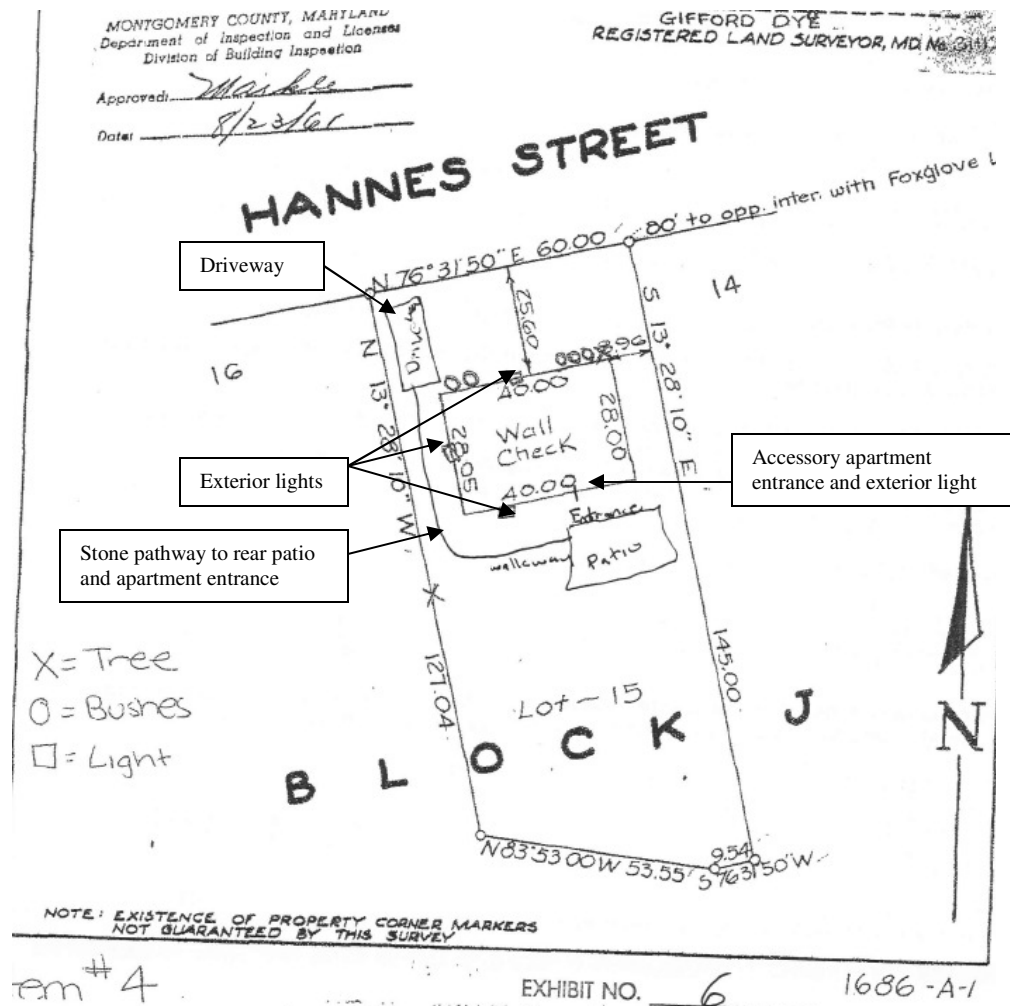
Technical Staff found that there was sufficient off-street parking (one parking space on the driveway) and unrestricted on-street parking along Hannes Street which staff concluded provided “at least two additional parking spaces.” Exhibit 12, p. 5. Technical Staff provided the following photographs of the available on-street parking in front of Petitioner’s home to support the conclusion that “[p]arking for the accessory apartment is sufficient.” Exhibit 12, pp. 6-7.



Technical Staff reports Petitioner does not propose any exterior changes to the property or existing landscaping which Staff indicated “falls within the standards expected for a single-family home.” Exhibit 12, p. 5. Technical Staff advises that no new lighting is proposed and the existing lighting will not cause “objectionable illumination or glare as the

provided lighting is residential in character.” Exhibit 12, p. 8.

The Landscaping and Lighting plan (Exhibit 6), as shown below, reflects the location of the existing landscaping and residential lighting.



E. Traffic Impacts

Technical Staff reported (Exhibit 12, p. 5):

The proposed accessory apartment meets the transportation requirements of the Adequate Public Facilities (APF) Ordinance. The proposed accessory apartment generates one additional peak-hour vehicular trip within the weekday morning peak period (6:30 to 9:30 a.m.) and the evening peak period (4:00 to 7:00 p.m.). A traffic study is not required to

satisfy LATR because the proposed land use generates fewer than 30 peak-hour trips within the weekday morning and evening peak periods. Policy Area Mobility Review (PAMR) mitigation (10% of the new site-generated vehicular trips in the Kensington/Wheaton Policy Area) is not required because the accessory apartment generates fewer than three new peak hour trips.

Based on these facts, Technical Staff found the “minimal amount of traffic increase can be accommodated by the existing road network in the neighborhood [and] [t]he proposed use is not likely to negatively impact the safety of vehicular or pedestrian traffic as the use will not generate a substantial increase in either form of traffic.” Exhibit 12, p. 9.

Due to the small scale of the proposed use, the Hearing Examiner has no basis in this record to disagree with the finding of Technical Staff and therefore agrees that the accessory apartment satisfies the LATR and PAMR tests and will have no adverse impacts on the area roadways and pedestrian facilities. There being no evidence in the record to the contrary, the Hearing Examiner so finds.

F. Environmental Impacts

Petitioner does not propose any external changes to the site. Technical Staff advises that the property is exempt from the Forest Conservation Law. Exhibit 12, p. 5. Based on this evidence, the Hearing Examiner finds that Petitioner’s request will have no adverse environmental impacts.

G. Community Response

There was no community response to the special exception request.

III. SUMMARY OF THE HEARING

Petitioner and her daughter, Nidia Tellez (“Ms. Tellez”) testified at the public hearing in support of the petition. DHCA Housing Code Inspector, Mr. Unray Peters also testified as

to compliance with the Housing Code. There was no opposition at the hearing.

A. Petitioner's Case

1. Petitioner Maria Lucia Tellez:

Petitioner executed an affidavit of posting (Exhibit 14) and confirmed she has owned the property since 1994. Exhibit 4; Tr. 13. Petitioner confirmed that the findings and conclusions in the Technical Staff report (Exhibit 12) were accurate and agreed to comply with all the conditions set forth in the report. Tr. 5-6. Petitioner agreed with the findings and conclusions of the housing inspector's report and agreed to make the necessary repairs listed in the preliminary inspection report dated May 8, 2012 (Exhibit 13). Tr. 7. Petitioner confirmed that she will reside in the main dwelling (first floor) and her daughter will occupy the accessory apartment. Tr. 6. Mrs. Tellez agreed with and accepted her daughter's testimony as part of her testimony.

2. Nidia Tellez:

Ms. Tellez testified in support of the petition and confirmed she will occupy the accessory apartment located in the rear of the property. Tr. 4 and 6. Ms. Tellez identified the photos in Exhibit 9. Tr. 7-8. She identified and explained the location of the existing trees, bushes and lighting for the property as noted on the Landscape and Lighting Plan (Exhibit 6). Tr. 8. Ms. Tellez also amended the Landscape and Lighting Plan to reflect the location of the driveway and stone pathway to the rear patio and separate entrance to the accessory apartment. Tr. 8-10. Ms. Tellez testified that there is space for at least one vehicle on the driveway and plenty of unrestricted on-street parking in front of the property. Tr. 10-11. She explained that Petitioner could park an additional vehicle on that section of the driveway that crosses over the sidewalk and to the curb. However, Petitioner does not park on this section of

the driveway because one of her neighbors uses a wheelchair and she does not want to block the sidewalk. Tr.10

Ms. Tellez testified that the photographs in the Technical Staff Report (Exhibit 12) accurately reflect the property as it currently exists. Tr. 14. Ms. Tellez identified the floor plan of the basement before (Exhibit 5 (b)) and after it was renovated as an accessory apartment (Exhibit 5 (a)). The accessory apartment, as depicted on the floor plan, includes a living room, kitchen, bathroom, laundry room and two bedrooms. Ms. Tellez identified and submitted numerous photographs she took approximately three days prior to the hearing (Exhibit 16 (a)-(n)) of the accessory apartment interior and several photographs of the exterior which included the accessory apartment entrance, lighting, patio, and stone pathway to the apartment entrance. Tr. 13-18.

B. Public Agency Testimony

Housing Code Inspector Unray Peters:

Unray Peters, DHCA Housing Code Inspector, testified that there was space for one vehicle on the driveway and additional on-street parking. He also confirmed there were no issues with the size of the accessory apartment windows and there were no changes to his inspection report dated May 8, 2012 (Exhibit 13). Tr. 18.

III. FINDINGS AND CONCLUSIONS

A special exception is a zoning device that authorizes certain uses provided that pre-set legislative standards and conditions are met, that the use conforms to the applicable master plan, and that it is compatible with the existing neighborhood. Each special exception petition is evaluated in a site-specific context because a given special exception might be appropriate in some locations but not in others. The zoning statute establishes both general and specific

standards for special exceptions, and the Petitioner has the burden of proof to show that the proposed use satisfies all applicable general and specific standards. Technical Staff concluded that Petitioner will have satisfied all the requirements to obtain the special exception, if she complies with the recommended conditions. Exhibit 12.

Weighing all the testimony and evidence of record under a “preponderance of the evidence” standard (Code 59-G-1.21(a)), the Hearing Examiner concludes that the instant petition meets the general and specific requirements for the proposed use, as long as Petitioner complies with the recommended conditions set forth in Part V, below.

A. Standard for Evaluation

The standard for evaluation prescribed in Code Section 59-G-1.21 requires consideration of the inherent and non-inherent adverse effects of the proposed use at the proposed location on nearby properties and the general neighborhood. Inherent adverse effects are “the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations.” Code Section 59-G-1.21. Inherent adverse effects alone are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are “physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site.” *Id.* Non-inherent adverse effects, alone or in conjunction with inherent effects, are a sufficient basis to deny a special exception.

Technical Staff have identified seven characteristics to consider in analyzing inherent and non-inherent effects: size, scale, scope, light, noise, traffic and environment. For the instant case, analysis of inherent and non-inherent adverse effects must establish what physical and operational characteristics are necessarily associated with an accessory apartment. Characteristics of the proposed accessory apartment that are consistent with the

“necessarily associated” characteristics of accessory apartments will be considered inherent adverse effects, while those characteristics of the proposed use that are not necessarily associated with accessory apartments, or that are created by unusual site conditions, will be considered non-inherent effects. The inherent and non-inherent effects thus identified must then be analyzed to determine whether these effects are acceptable or would create adverse impacts sufficient to result in denial.

Technical Staff lists the following inherent characteristics of accessory apartments (Exhibit 12, p. 6):

- (1) The existence of the apartment as a separate entity from the main living unit but sharing a party wall with it;
- (2) The provision within the apartment of the necessary facilities, spaces, and floor area to qualify as a habitable space under the applicable code provisions;
- (3) A separate entrance and walkway and sufficient exterior lighting;
- (4) Sufficient parking;
- (5) The existence of an additional household on the site with resulting additional activity including more use of outdoor space and more pedestrian, traffic, and parking activity; and
- (6) The potential for additional noise.

The Hearing Examiner concludes that, in general, an accessory apartment has characteristics similar to a single-family residence, with only a modest increase in traffic, parking and noise that would be consistent with a larger family occupying a single-family residence. Thus, the inherent effects of an accessory apartment would include the fact that an additional resident (or residents) will be added to the neighborhood, with the concomitant possibility of an additional vehicle or two.

Technical Staff found that there are no non-inherent adverse effects arising from the accessory apartment. In support of this conclusion, Technical Staff summarized the evidence as follows, (Exhibit 12, p. 6):

In this case, there are no adverse effects that will negatively impact the community above and beyond those necessarily inherent to an accessory apartment. The apartment will be located in the basement of the main dwelling and is non-identifiable from the street. The apartment is set up to provide all the spaces and facilities necessary for an apartment use. The accessory unit has a separate entrance apart from the main dwelling.

The apartment entrance is typical of a rear entry to a single-family basement, making it difficult to distinguish from any other neighborhood home. The walkway and grounds of the accessory apartment will be safe and illuminated, consistent with typical residential standard.

Parking for the accessory apartment is sufficient. There is space available for one vehicle in the existing driveway; however, on-street parking is available along Hannes Street with no parking restrictions. Many homes in the neighborhood park on the street.

Based on the evidence in this case, and considering size, scale, scope, light, noise, traffic and environment, the Hearing Examiner concludes, as did the Technical Staff, that there are no non-inherent adverse effects from the proposed use.

B. General Standards

The general standards for a special exception are found in Section 59-G-1.21(a). The Technical Staff report and the Petitioner's written evidence and testimony provide sufficient evidence that the general standards would be satisfied in this case, as outlined below.

Sec. 59-G-1.21. General conditions.

§59-G-1.21(a) *-A special exception may be granted when the Board, the Hearing Examiner, or the District Council, as the case may be, finds from a preponderance of the evidence of record that the proposed use:*

(1) Is a permissible special exception in the zone.

Conclusion: An accessory apartment is a permissible special exception in the R-60 Zone, pursuant to Code § 59-C-1.31(a).

(2) Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a

proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.

Conclusion: The proposed use complies with the specific standards set forth in § 59-G-2.00 for an accessory apartment, as outlined in Part C, below.

- (3) *Will be consistent with the general plan for the physical development of the District, including any master plan adopted by the Commission. Any decision to grant or deny special exception must be consistent with any recommendation in a master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that granting a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.*

Conclusion: The subject property is covered by the *Kemp Mill Master Plan*, approved and adopted in 2001. For reasons set forth in Part II.C of this report, the Hearing Examiner finds that the planned use, an accessory apartment in a single-family detached home located in the R-60 zone, is consistent with the goals and objectives of the Master Plan.

- (4) *Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions, and number of similar uses.*

Conclusion: The accessory apartment is located in the basement and rear of an existing dwelling and will not require any external changes. Technical Staff found that the accessory apartment “will have only a slight impact on population density

and result in a modest increase in the intensity of use of the property with no change in the character of the use.” Exhibit 12, 8. It therefore will maintain its residential character. There will be sufficient parking, considering the one off-street space on the driveway and the availability of at least two on-street parking spaces in front of Petitioner’s home on Hannes Street which has unrestricted parking. Technical Staff found that traffic conditions will not be affected adversely by the proposed use and found no other special exceptions or similar uses (another accessory apartment) in the general neighborhood. Based on these facts and the other evidence of record, the Hearing Examiner concludes, as did Technical Staff, that the proposed use will be in harmony with the general character of the surrounding residential neighborhood. *Id.*

(5) *Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: For the reasons set forth in the previous section of this report, the Hearing Examiner agrees and so finds that the special exception will not be detrimental to the use, peaceful enjoyment, economic value, or development of the surrounding properties or the defined neighborhood, provided that the special exception is operated in compliance with the listed conditions of approval.

(6) *Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: Technical Staff found that the proposed use will not cause any objectionable noise, vibrations, fumes, odors, dust, or physical activity, “or objectionable

illumination or glare as the provided lighting is residential in character.”

Exhibit 12, pp. 8 and 11. There will be a light fixture at both the front door to the main dwelling and accessory apartment entrance in the rear of the house.

The stone pathway will be illuminated with existing lighting located on the west side and rear corner of the house. Exhibit 6. The Hearing Examiner agrees with Technical Staff that the proposed lighting is residential in nature. Based on this record, the Hearing Examiner finds that the use will be indoors and residential, and that it will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare or physical activity at the subject site.

(7) Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with the recommendations of a master or sector plan do not alter the nature of an area.

Conclusion: Technical Staff found that there are no other accessory apartments in the general neighborhood which consists of 73 single-family detached homes and zoned R-60. Exhibit 12, pp. 4 and 8. Because the proposed use is a residential use by definition, the special exception will not alter the predominantly residential nature of the area. The Hearing Examiner concurs with Technical Staff and so finds that the proposed special exception will not increase the number, scope, or intensity of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area.

(8) Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or

workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

Conclusion: The evidence supports the conclusion that the proposed use would not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site.

(9) Will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage and other public facilities.

Conclusion: Technical Staff indicates that the subject site does not require approval of a preliminary plan of subdivision and will be adequately served by existing public services and facilities (Exhibit 12, p. 9), and the evidence supports this conclusion.

- (A) If the special exception use requires approval of a preliminary plan of subdivision, the Planning Board must determine the adequacy of public facilities in its subdivision review. In that case, approval of a preliminary plan of subdivision must be a condition of the special exception.*
- (B) If the special exception:*
 - (i) does not require approval of a new preliminary plan of subdivision; and*
 - (i) the determination of adequate public facilities for the site is not currently valid for an impact that is the same or greater than the special exception's impact;**then the Board of Appeals or the Hearing Examiner must determine the adequacy of public facilities when it considers the special exception application. The Board of Appeals or the Hearing Examiner must consider whether the available public facilities and services will be adequate to serve the proposed development under the Growth Policy standards in effect when the special exception application was submitted.*

Conclusion: The special exception sought in this case would not require approval of a preliminary plan of subdivision. Therefore, the Board must consider whether the available public facilities and services will be adequate to serve the proposed development under the applicable Growth Policy standards. These standards include Local Area Transportation Review (“LATR”) and Policy Area Mobility Review (PAMR). As indicated in Part II. E. of this report, Transportation Planning Staff did do such a review, and concluded that the proposed accessory apartment use would add one additional trip during each of the peak-hour weekday periods. Exhibit 12, p. 5. Since the existing house, combined with the proposed accessory apartment, would generate fewer than 30 total trips in the weekday morning and evening peak hours, the requirements of the LATR are satisfied without a traffic study. For the same reason, PAMR is also satisfied. Transportation Planning Staff also advised that “PAMR mitigation (10% of the new site-generated vehicular trips in the Kensington/Wheaton Policy Area) is not required because the accessory apartment generates fewer than three new peak-hour trips.” *Id.* Therefore, the Hearing Examiner finds that the instant petition meets all the applicable Growth Policy standards.

(C) *With regard to public roads, the Board or the Hearing Examiner must further find that the proposed development will not reduce the safety of vehicular or pedestrian traffic.*

Conclusion: Technical Staff found that the proposed use satisfies transportation related requirements and will not reduce the safety of vehicular or pedestrian traffic.

Exhibit 12, pp. 5 and 9. Based on the evidence of record, especially given the availability of one off-street (driveway) space and unrestricted on-street parking in front of the subject property, and the limited number of additional trips generated by the special exception, the Hearing Examiner concurs with Technical Staff and finds that the proposed use will not reduce the safety of vehicular or pedestrian traffic.

C. Specific Standards

The testimony and the exhibits of record, especially the Technical Staff Report (Exhibit 12), provide sufficient evidence that the specific standards required by Section 59-G-2.00 are satisfied in this case, as described below.

Sec. 59-G-2.00. Accessory apartment.

A special exception may be granted for an accessory apartment on the same lot as an existing one-family detached dwelling, subject to the following standards and requirements:

(a) Dwelling unit requirements:

- (1) Only one accessory apartment may be created on the same lot as an existing one-family detached dwelling.*

Conclusion: Only one accessory apartment is proposed.

- (2) The accessory apartment must have at least one party wall in common with the main dwelling on a lot of one acre (43,560 square feet) or less. On a lot of more than one acre, an accessory apartment may be added to an existing one-family detached dwelling, or may be created through conversion of a separate accessory structure already existing on the same lot as the main dwelling on December 2, 1983. An accessory apartment may be permitted in a separate accessory structure built after December 2, 1983, provided:*
 - (i) The lot is 2 acres or more in size; and*
 - (ii) The apartment will house a care-giver found by the Board*

to be needed to provide assistance to an elderly, ill or handicapped relative of the owner-occupant.

Conclusion: The apartment is located in the basement of an existing single-family detached dwelling, and therefore shares a wall in common, as required for a lot of this size (under an acre).

(3) An addition or extension to a main dwelling may be approved in order to add additional floor space to accommodate an accessory apartment. All development standards of the zone apply. An addition to an accessory structure is not permitted.

Conclusion: No new addition or extension of the main dwelling is proposed. The accessory apartment will be located in the basement of an existing dwelling.

(4) The one-family detached dwelling in which the accessory apartment is to be created or to which it is to be added must be at least 5 years old on the date of application for special exception.

Conclusion: The house was built in 1962. Exhibit 15. It therefore meets the “5 year old” requirement.

(5) The accessory apartment must not be located on a lot:

- (i) That is occupied by a family of unrelated persons; or*
- (ii) Where any of the following otherwise allowed residential uses exist: guest room for rent, boardinghouse or a registered living unit; or*
- (iii) That contains any rental residential use other than an accessory dwelling in an agricultural zone.*

Conclusion: The use as proposed does not violate any of the provisions of this subsection; a requirement that occupancy of both the main house and the accessory apartment meet all Code requirements will be a condition of this approval.

(6) Any separate entrance must be located so that the

appearance of a single-family dwelling is preserved.

Conclusion: Access to the accessory apartment is through an existing separate exterior entrance door located in the rear of the dwelling which Technical Staff found “preserves the appearance of a single-family dwelling.” Exhibit 12, p. 13.

There will thus be no change to the residential appearance of the dwelling.

(7) All external modifications and improvements must be compatible with the existing dwelling and surrounding properties.

Conclusion: Petitioners are not proposing any new construction or modifications to the exterior of the dwelling. Exhibit 12, p. 13.

(8) The accessory apartment must have the same street address (house number) as the main dwelling.

Conclusion: The accessory apartment will have the same address as the main dwelling.

(9) The accessory apartment must be subordinate to the main dwelling. The floor area of the accessory apartment is limited to a maximum of 1,200 square feet. The 1,200 square feet limitation does not apply to an accessory apartment located in a separate existing accessory structure located on the same lot as the main dwelling. The maximum floor area for a separate existing accessory structure must be less than 50 percent of the total floor area of the main dwelling, or 2,500 square feet, whichever is less.

Conclusion: The accessory apartment is subordinate to the main dwelling and under the 1,200 square foot maximum, as it occupies approximately 1,114 square feet of space (only 537 square feet of which is habitable) in Petitioner’s existing 2,234 square-foot home. Exhibit 12, pp. 2 and 13. The Hearing Examiner finds, as did Technical Staff, that the accessory apartment is subordinate to the main dwelling.

59-G § 2.00(b) Ownership Requirements

- (1) *The owner of the lot on which the accessory apartment is located must occupy one of the dwelling units, except for bona fide temporary absences not exceeding 6 months in any 12-month period. The period of temporary absence may be increased by the Board upon a finding that a hardship would otherwise result.*

Conclusion: The Petitioner will live in the main dwelling unit on the property.

- (2) *Except in the case of an accessory apartment that exists at the time of the acquisition of the home by the Petitioner, one year must have elapsed between the date when the owner purchased the property (settlement date) and the date when the special exception becomes effective. The Board may waive this requirement upon a finding that a hardship would otherwise result.*

Conclusion: According to the SDAT tax records submitted into the record Petitioner purchased the home on October 6, 1994. Exhibit 15. The one-year rule has therefore been satisfied.

- (3) *Under no circumstances, is the owner allowed to receive compensation for the occupancy of more than one dwelling unit.*

Conclusion: The Petitioner will receive compensation for only one dwelling unit as a condition of the special exception.

- (4) *For purposes of this section owner means an individual who owns, or whose parent or child owns, a substantial equitable interest in the property as determined by the Board.*

Conclusion: Petitioner is listed as the sole owner of the property according to SDAT tax records. Exhibit 15. Therefore, the Hearing Examiner concludes that this condition has been met.

- (5) *The restrictions under (1) and (3) above do not apply if the accessory apartment is occupied by an elderly person who has been a continuous tenant of the accessory apartment for at least 20 years.*

Conclusion: Not applicable.

59-G § 2.00(c) Land Use Requirements

(1) The minimum lot size must be 6,000 square feet, except where the minimum lot size of the zone is larger. A property consisting of more than one record lot, including a fraction of a lot, is to be treated as one lot if it contains a single one-family detached dwelling lawfully constructed prior to October, 1967. All other development standards of the zone must also apply, including setbacks, lot width, lot coverage, building height and the standards for an accessory building in the case of conversion of such a building.

Conclusion: The subject property consists of a single lot that is approximately 8,247 square feet in size, and therefore satisfies this requirement. The following chart from the Technical Staff report (Exhibit 12, p. 10) demonstrates compliance with all development standards for the R-60 Zone:

Development Standard	Min/Max Required	Provided	Applicable Zoning Provision
Maximum Building Height	2.5 stories	1 story	§ 59-C-1.327
Minimum Lot Area	6,000 sq. ft.	8,247 sq. ft.	§ 59-C-1.322(a)
Minimum Lot Width at Front Building Line	60 ft.	60 ft.	§ 59-C-1.322(b)
Minimum Lot Width at Street Line	25 ft.	60 ft.	§ 59-C-1.322(b)
Minimum Setback from Street	25 ft.	25 ft.	§ 59-C-1.323(a)
Minimum Rear Yard Setback	20 ft.	74 ft.	§ 59-C-1.323(b)(2)
Maximum Building Coverage	35 percent	Approx. 13 percent	§ 59-C-1.328
Maximum Floor Area for Accessory Apartment	1,200 sq. ft.	1,114 sq. ft.	§ 59-G-2.00(a)(9)

- (2) *An accessory apartment must not, when considered in combination with other existing or approved accessory apartments, result in excessive concentration of similar uses, including other special exception uses, in the general neighborhood of the proposed use(see also section G-1.21 (a)(7) which concerns excessive concentration of special exceptions in general).*

Conclusion: As there are no similar or accessory apartment uses in the general neighborhood or immediate vicinity of the subject property, the Hearing Examiner finds that the proposed special exception will not create an excessive concentration of similar uses. Exhibit 12, p. 15.

- (3) *Adequate parking must be provided. There must be a minimum of 2 off-street parking spaces unless the Board makes either of the following findings:*
- (i) *More spaces are required to supplement on-street parking; or*
 - (ii) *Adequate on-street parking permits fewer off-street spaces.*
- Off-street parking spaces may be in a driveway but otherwise must not be located in the yard area between the front of the house and the street right-of-way line.*

Conclusion: Technical Staff found that “[t]he existing driveway accommodates one vehicle; however, on-street parking is available Hannes Street with no parking restrictions, which provides at least two additional parking spaces.” Exhibit 12, p. 5. Technical Staff concluded, given the ample and unrestricted on-street parking in front the subject property, “parking for the accessory apartment is sufficient.” Exhibit 12, p. 6. The Hearing Examiner finds there is adequate on-street parking to permit fewer than the minimum requirement of two (2) off-street parking spaces. As a condition of approval, Petitioner must make parking spaces available for her accessory apartment tenants, either off-

street (on the driveway) or on the street (Hannes Street) directly in front of Petitioner's home.

D. Additional Applicable Standards

Not only must an accessory apartment comply with the zoning requirements as set forth in 59-G, it must also be approved for habitation by the Department of Housing and Community Affairs. As discussed in Part II. D. of this Report, the Housing Code Inspector's report (Exhibits 12 and 13) notes certain issues, and recommends that occupation of the accessory apartment be limited to no more than two (2) unrelated persons, or a family not to exceed four (4) persons. As mentioned above, Petitioner has agreed to meet all conditions, and will make the repairs required by the Housing Code Inspector.

V. RECOMMENDATION

Based on the foregoing analysis, I recommend that the Petition of Maria L. Tellez, BOA No. S-2832, which seeks a special exception for an accessory apartment to be located at 202 Hannes Street, Silver Spring, Maryland, be GRANTED, with the following conditions:

1. The Petitioner is bound by her testimony, representations and exhibits of record;
2. The Petitioner must comply with the conditions set forth in the Memorandum of Unray Peters, Housing Code Inspector, Division of Housing and Code Enforcement (Exhibit 13):
 - a. The living room wall near the electrical outlet needs to be painted.
 - b. The tires located in side yard need to be removed from property.
 - c. The exterior landscaping needs to be maintained with regards to cutting grass throughout property;
3. Petitioner must comply with DHCA's determination of the maximum permitted occupancy for the accessory apartment (i.e., the accessory apartment may be occupied by no more than two (2) unrelated persons, or a family not to exceed four (4) persons), and other DHCA directives needed to ensure that the accessory apartment is maintained up to Code, as listed in Exhibit 13;

4. Petitioner must occupy one of the dwelling units on the lot on which the accessory apartment is located;
5. The accessory apartment must not be located on a lot that is occupied by a family of unrelated persons, or where there is a guest room for rent, a boardinghouse or registered living unit;
6. Petitioner must not receive compensation for the occupancy of more than one dwelling unit;
7. Petitioner must make parking spaces available for her accessory apartment tenants, either off-street (on the driveway) or on the street (Hannes Street) directly in front of Petitioner's home; and
8. Petitioner must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and occupancy permits necessary to occupy the special exception premises and operate the special exception as granted herein. Petitioner shall at all times ensure that the special exception use and premises comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements.

Dated: June 13, 2012

Respectfully submitted,

Tammy J. CitaraManis
Hearing Examiner